

United States Senate

WASHINGTON, DC 20510-4802

June 18, 2004

The Honorable Tommy G. Thompson
Secretary
Department of Health and Human Services
200 Independence Avenue, S.W.
Washington, D.C. 20201

Dear Mr. Secretary,

We are writing to request that, as your Department develops regulations to implement the new Medicare law, you use all administrative authority available to you to ensure that retirees are protected. The *Wall Street Journal* recently reported that employers have found a loophole in the law that could allow them to claim the full subsidy regardless of how much they actually spend on retiree drug costs. The language in Title I, Section 1860D-22, could be interpreted to allow an employer to receive the full subsidy payment for a retiree drug benefit that shifts premium costs or cost-sharing to retirees. This would undermine the employer-based system and be extremely detrimental to retirees. We are extremely concerned about the possibility of employers receiving the full subsidy allowed by the law while shifting new and burdensome costs to retirees and believe that this is simply another way in which retirees are discriminated against in the new Medicare law.

Employers need immediate relief from their retiree prescription drug costs. Instead of offering that relief, the recently enacted Medicare law penalizes employers who are trying to do the right thing by providing retiree health benefits. The new Medicare prescription drug benefit discriminates against Medicare beneficiaries with employer-sponsored coverage and exacerbates the current downward trend in retiree benefits. With a trick definition of out-of-pocket costs, known as true-out-of-pocket costs, the new Medicare law does not allow any spending by employers to fill in the significant gaps in coverage under the drug benefit to count toward beneficiaries meeting the catastrophic limit. According to the Congressional Budget Office, 23 percent of beneficiaries currently receiving a drug benefit from their employer – at least 2.7 million retirees – will lose that coverage as a direct result of the structure of the new Medicare law. This is unacceptable.

In addition to preventing employer contributions from counting towards the catastrophic limit, the new Medicare law also undermines employer-sponsored coverage by giving private plans a substantially more generous subsidy than employers. Employers that sponsor a qualified prescription drug benefit receive a 28 percent subsidy for each enrollee's drug costs between \$250 and \$5,000. PDPs and MA-PDs that provide retirees the same qualified Medicare drug benefits receive a higher federal subsidy that finances approximately 73 percent of the costs of a typical plan. This subsidy differential creates a strong incentive for employers to drop their existing retiree drug coverage and enroll their retirees in less comprehensive Medicare plans.

Employers have not received the relief they anticipated from enactment of a prescription drug benefit under Medicare. While private plans enjoy a significant subsidy under the new law, employers have been left holding the short end of the stick. The paltry 28 percent subsidy for employer-sponsored prescription drug coverage is not enough to mitigate what companies are currently spending on prescription drugs for retirees. Consequently, employers that intend to accept the employer subsidy and continue offering prescription drug coverage are still looking for ways to shift more costs to their retirees.

As you know, employer-sponsored health plans are the single greatest source of health insurance coverage for retirees. These plans assist retirees with Medicare's cost-sharing requirements and pay for benefits that Medicare does not cover, including prescription drugs. Currently, employer-sponsored health plans provide prescription drug coverage for one in three Medicare beneficiaries. Without the comprehensive health benefits provided by employers, many retirees would find themselves without access to meaningful health insurance coverage.

Unfortunately, double-digit increases in health care costs over the last decade have prompted employers to decrease or eliminate retiree health benefits, cap their contributions, or drop retiree health coverage altogether. According to the *Kaiser Family Foundation*, only about half of all private-sector employers with 1,000 or more employees continue to offer retiree health benefits. For these companies, prescription drug benefits constitute between 50 and 60 percent of spending on retirees, and, therefore, are the major target of efforts to rein in rising retiree health costs.

Companies offer much more comprehensive prescription drug coverage than that available under the new Medicare prescription drug benefit. Instead of adding to the erosion of retiree health benefits and driving millions of seniors to Medicare to obtain less generous prescription drug coverage, the new Medicare law should encourage employers who are currently providing prescription drug benefits to their retirees to continue to do so. The new law should reward and strengthen these employers because the benefits they are providing go a long way toward helping America's seniors afford prescription drugs. But the Medicare Prescription Drug, Improvement, and Modernization Act falls short of these objectives, and instead forces employers to drop coverage because their contributions on behalf of Medicare beneficiaries do not count.

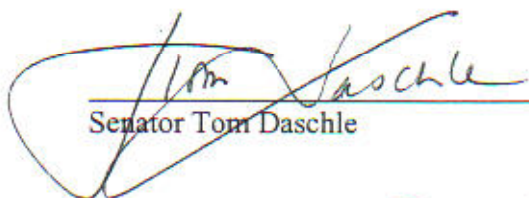
As your Department begins publishing regulations to implement the new Medicare law, we request that you use all administrative authority available to you to implement a standard that protects retirees. It is imperative that you provide clear guidance that employers who cost-shift to their retirees should not be allowed to receive the full subsidy, and we believe that you have the administrative authority to do so. We also believe that the true-out-of-pocket definition must be eliminated and the subsidy to employers made equal to that provided to private plans.

We appreciate your prompt attention to this matter.

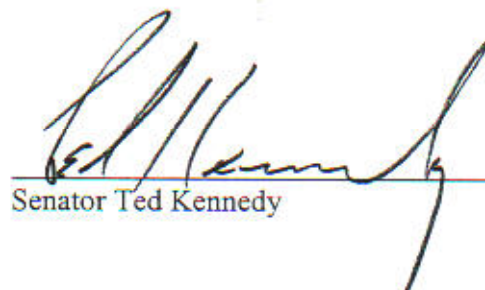
Sincerely,


Senator John D. Rockefeller IV


Senator Jon Corzine



Senator Tom Daschle



Senator Ted Kennedy



Senator Bob Graham



Senator Barbara Mikulski



Senator Paul Sarbanes



Senator Christopher Dodd



Senator Hillary Rodham Clinton



Senator Tom Carper



Senator Ben Nelson



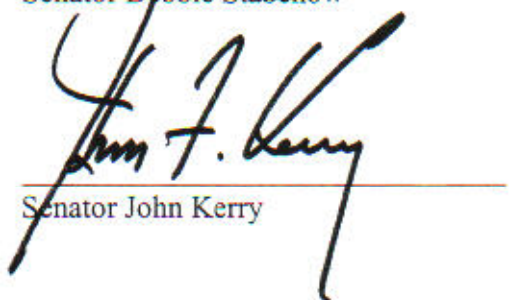
Senator Bill Nelson



Senator Debbie Stabenow



Senator Frank Lautenberg

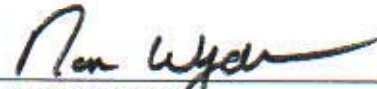


Senator John Kerry



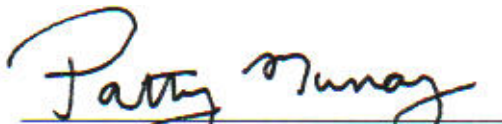
Senator Robert Byrd



Senator Carl Levin


Senator Ron Wyden


Senator John Edwards

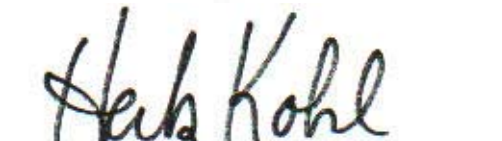
Senator Harry Reid

Senator Patty Murray


Senator Maria Cantwell

Senator Tom Harkin

Senator Mark Dayton

Senator Jack Reed

Senator Herb Kohl

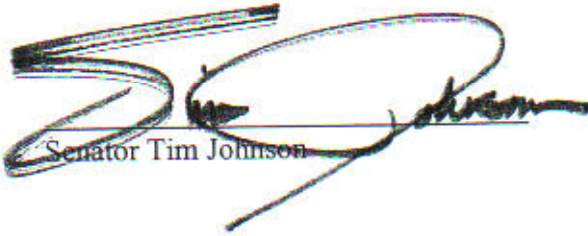
Senator Evan Bayh

Senator Daniel Inouye

Senator Russ Feingold

Senator Mark Pryor

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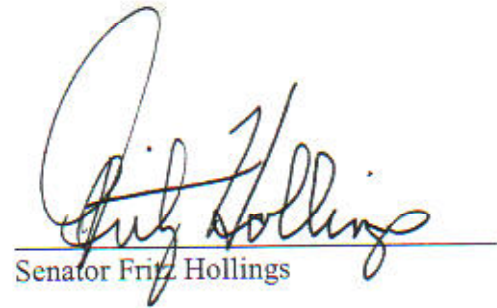
Senator Tim Johnson



Senator Patrick Leahy



Senator Richard Durbin



Senator Fritz Hollings



Senator Charles Schumer



Senator Barbara Boxer